

Serial No. 10/754,036

REMARKS

The Examiner has rejected claims 1-18 under the Judicially created Doctrine of Obviousness-Type Double Patenting over claims 1, 9, 17 and 18 of Applicant's prior patent, U.S. Patent No. 6,615,143. As explained more fully in Applicant's previous Response, the present claims perform a *transient* analysis, while the prior patent performs a steady state or harmonic analysis.

Applicant *cannot* file a terminal disclaimer to overcome this rejection because Applicant's prior patent was published more than one year before the filing date of the present application. However, there is nothing in the claims or disclosure of the prior patent that teaches performing the transient analysis claimed here.

A double patenting rejection of the obviousness type is analogous to a failure to meet the nonobviousness requirement of 35 U.S.C. 103 except that the patent principally underlying the double patenting rejection is not considered prior art. Here, the Examiner has acknowledged that the present claims recite analyses of transient acoustic radiation and that the patent claims do not. But the Examiner has not offered sufficient motivation or pointed to any sort of enabling disclosure of using the method claimed in the patent for performing a transient analysis.

Contrary to the Examiner's statement (page 4 of Final Rejection), this is not merely a "variation in the words of the limitations of the claims which are performing the same functions." Analyzing the transient acoustics is a much different problem from analyzing the steady state or harmonic acoustics, with completely different results.

Of course, the *existence* of transient acoustic radiation was known prior to the present application (and prior to the patent). The Examiner simply states without proof that the

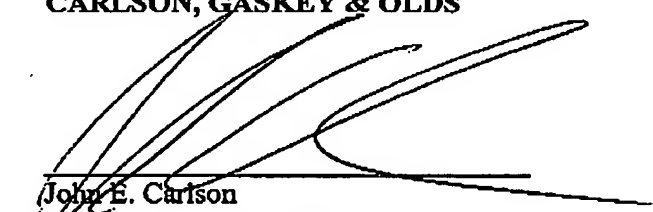
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determination of transient acoustic pressure would be obvious based upon Applicant's prior patent. This is untrue. In fact, the techniques described in Applicant's patent do not provide transient acoustic radiation analysis and could not be used to provide transient acoustic radiation analysis without the patentable modifications, such as are described in the present application.

For the above reasons, the Examiner has not set forth a *prima facie* case of obviousness-type double patenting. Therefore, the claims should be allowed.

It is believed that no fees are due; however, if any fees are due please charge all fees to Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds, P.C.

Respectfully submitted,

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Dated: June 20, 2005